

Jeremy Pasternak, State Bar No. 181618
jdp@pasternaklaw.com
Deanna Maxfield, State Bar No. 291913
dm@pasternaklaw.com
LAW OFFICES OF JEREMY PASTERNAK
354 Pine Street, 5th Floor
San Francisco, California 94104
Tel: (415) 376-1710
Fax: (415) 693-0393

Joshua Konecky, SBN 182897
jkonecky@schneiderwallace.com
Nathan Piller, SBN 300569
npiller@schneiderwallace.com
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HERMAN OVERPECK; SHANNON
SOBASZKIEWICZ; and KEVIN
STERLING, individually and on behalf of all
others similarly situated, and as a proxy of the
state of California on behalf of aggrieved
employees,

Plaintiffs,

vs.

FEDEX CORPORATION and FEDEX
GROUND PACKAGE SYSTEM, INC., et
al.,

Defendants,

Case No. 4:18-cv-07553-PJH

**DECLARATION OF
HERMAN OVERPECK IN OPPOSITION
TO DEFENDANT FEDEX GROUND
PACKAGE SYSTEM, INC.'S MOTION
FOR SUMMARY JUDGMENT**

DECLARATION OF HERMAN OVERPECK

I, Herman Overpeck, have personal knowledge of the facts stated in this declaration, and if called upon to testify, I would testify to the truth and accuracy of the following:

1. I worked for FedEx from approximately October 2017 to late August or early September 2021, with occasional time off in between these years.
2. When I first began working for FedEx in 2017, I was based out of a hub in Woodbridge, New Jersey. In about February 2018, I was able to transfer to a FedEx hub in Tracy, California. I transferred back to New Jersey later that year. In May of 2020 I transferred to another FedEx contractor called “ZMR,” and ultimately finished my FedEx employment under ZMR.
3. While I was based out of the Woodbridge, New Jersey hub, the name on my paystubs was “G2 Logistics.” While I was based in Tracy, the name on my paystubs was “Bondz Trucking Company.” When I transferred to another Woodbridge, New Jersey-based contractor in 2020, the name on my pay stub was “ZMR.” I understand these to be called “independent service providers” or “contract service providers” of FedEx.
4. FedEx did not pay me directly, but it did control my hours and working conditions, regardless of the service provider that issued my paychecks. (I will call a “service provider” a “contractor” in this declaration as that is how the drivers in the field reference them.) For example, if a run from Woodbridge, New Jersey to Rialto, California was assigned, the specific route to take was required by FedEx and deviations were not tolerated because some extra tolls might be incurred or more miles might be driven by taking a different route. Additionally, there were time concerns in that a different route might exceed the “run time.” “Run-time” was the outermost time FedEx allowed us to complete the run. The work I performed for FedEx, other than the locations I was driving, was the same regardless of the contractor I was driving under. No additional training was required for me to transfer from one contractor to another.
5. In all such driving positions my FedEx ID number remained the same. I was aware that I could circulate between different FedEx locations and work with different contractor as long as my FedEx number remained updated and my qualifications approved by FedEx, which occurs

DECLARATION OF HERMAN OVERPECK

each year. The FedEx number was placed on a badge and this badge gave me personal access to gated and secure areas of FedEx facilities.

6. I worked as a FedEx Linehaul driver transporting freight long distances for FedEx. I was uniformed in FedEx shirts, dark blue pants with reflector lines, and had a baseball cap with the FedEx logo. My badge had a clip to fasten to my FedEx shirt. I was also given a rain-jacket which is labeled FedEx and has the FedEx colors and logos. In all three of my contractor driving jobs with FedEx, I did not have a uniform showing the contractor's name and logo. I also drove tractors showing FedEx's name and DOT authority number. Trucks in all three of my contracting jobs looked the same, white in color.

7. Additionally, by the time I left FedEx, the contractors had cameras in place in each truck, which I was informed by the contractor was a mandatory requirement of FedEx. The cameras faced both inside the truck and outside the truck. Sometimes I felt personally violated with a camera seemingly staring at me 24/7 since I was in the truck constantly (changing clothes, peeing in bottles because FedEx's deadlines did not enable me to find and stop at actual restrooms most of the time, etc.). I tried to ignore the FedEx-mandated camera.

8. I mainly pulled trailers showing the FedEx logo. Trailers were either "pups" (smaller trailers) or typical 53-foot length trailers. At times, I was instructed to take a 53-foot trailer from another trucking company, like Swift, Prime or US Express. FedEx houses other trucking companies' trailers in their yards and those trailers have their own company names and brands on them. I do not recall seeing a FedEx contractor trailer and I do not think such a thing exists. To my knowledge, only the truly independent trucking companies have their own trailers to move in addition to moving FedEx trailers.

9. Before I was able to initially work for FedEx through a contractor, I was required by FedEx to fill out an application and do an interview at the FedEx hub in Woodbridge, New Jersey. I also was required to undergo a background check as part of that process. I could not

DECLARATION OF HERMAN OVERPECK

begin working until I passed the background check that FedEx required. I was processed in Woodbridge by a woman named Kathleen at FedEx's human resources department. I also was required to take a competency test at FedEx's Woodbridge hub which was contained on a computer station next to Kathleen's office. To avoid any cheating, my test-taking was monitored by Kathleen inside the FedEx offices.

10. Later, when I transferred from the G2 Logistics contractor to the California contractor named Bondz, I was already in FedEx's system. So, it was not like applying for a new job because FedEx already had a FedEx ID approved for me. Likewise, after I left Bondz, I was able to simply use my FedEx ID number and get transferred back to G2 Logistics. And then again, when I sought a job with contractor ZMR in Woodbridge, New Jersey, I did not have to go through the process I went through originally because I already had my FedEx ID number. I provided, at the contractor's request, my FedEx ID number and I was accepted without delay. At the same time, I also understood that FedEx could disqualify me if I did not meet its safety or service expectations which meant any issues in my driving performance under one contractor, would affect any attempt I made to work for another contractor. So, a disqualification by FedEx while working with one contractor would disqualify me for working under any other contractor's name. I avoided this problem by not having any disqualifying driving issues during my work as a FedEx driver.

11. While based out of the Woodbridge, New Jersey hub, I regularly drove routes from New Jersey to California and drove intrastate within California as well. While based out of the Tracy, California, hub, I continuously drove a dedicated route back and forth between Tracy, California, and Palm Springs, California for about five days at a time. I will focus in this declaration on the details of my day-to-day work when I was based out of California, although the level of control FedEx exercised over me was pretty much the same regardless of whether I was based in New Jersey or California.

DECLARATION OF HERMAN OVERPECK

12. I worked as a “team” driver (both when I was based out of New Jersey and when I was based out of California), meaning I took turns driving with another driver to maximize the truck’s movement. FedEx used the “team” configuration to keep the freight moving almost constantly. For example, when I ran routes based out of Tracy, California, typically one of us would drive from Tracey to Palm Springs, and the other would drive back from Palm Springs to Tracy, and so on. While out on the road, I spent my time in or near the truck and often had to try to sleep in the “sleeper berth” while my partner was driving. This was not comfortable as explained further below. In any event, I could not leave the truck when my co-worker was driving any more than when I was driving.

13. When based out of the FedEx hub in Tracy, California, for example, our job was to take two trailers, called “pups” to something called a “smart post” in Palm Springs, California, where we would switch our trailers with a driver from Phoenix. That driver would then take our trailers and go back to Phoenix; we’d take his and go back to Tracy. Once we returned to Tracy, we typically had only three or four hours before we had to go out again, sometimes even as few as two. We had to stay in the truck until FedEx linehaul was ready to send us back out, which was usually around 4:00 or 5:00 a.m. We were required to repeat these steps continuously for five days at a time; this was the work that FedEx had available and that we were hired to do. Using the time for ourselves and having off-duty breaks at either end of the dedicated route was not an option.

14. Before driving the first leg of the trip from Tracy to Palm Springs, I had to complete a number of tasks between arriving and getting out on the road. These included a pre-trip inspection, hooking, and paperwork. This usually took between forty-five minutes to two hours. I was not allowed to clock in as “on duty” on the electronic driver log system until after completing these tasks, when we were pulling out of the front gate.

15. Once we arrived in Palm Springs, I typically had to hook up a new trailer, disconnect my original trailer, and do the necessary inspections. This process usually took from forty-five

DECLARATION OF HERMAN OVERPECK

minutes to an hour and worked similarly to the pre-route process at the Tracy hub. Again, I was not permitted to clock in as “on duty” on the electronic driver log system until pulling out of the gate.

16. Once the truck was in motion, I was either driving or constrained to the vehicle while my co-driver was driving. The team configuration exists so that after roughly 500 to 600 miles of driving down the road, a new fresh clock with a second driver is available which avoids the normal ten-hour truck pause required by the DOT. This allows the truck to keep moving without hours of service violations. During the non-driving period of time in the “sleeper berth,” I was supposed to be getting rest.

17. However, it is very difficult to sleep properly in a moving truck due to the bouncing and shaking caused by poorly conditioned roadways and construction sites. Loud noises can be heard constantly from passing vehicles, and engine and transmission sounds are a constant.

Inside the truck are FedEx imposed safety equipment which sounds off alarms when the truck goes out of the perceived lane. This sounds off as a loud buzzing noise and is very distracting to a person trying to sleep. Worse, these alarms sound off even when the driver is in his lane because the device picks up grooves in the road and “thinks” the truck is out of lane, when in reality it is not. So, it may be good for the driver who might be falling asleep at the wheel, but it’s horrible for someone trying to rest in the sleeper berth.

18. There is also a sense of fear knowing a truck might roll-over or be in a serious accident at any time. I am aware of a case in New Mexico wherein a FedEx co-driver was thrown out of his sleeper, killing him. Sadly, FedEx denied any help for that driver under the same argument it makes in this case – that such a person is supposedly not a FedEx employee. To me, that is shameful corporate indifference.

19. When I was not driving, there was nothing to really do because I could not go anywhere as the truck kept moving. I occasionally would watch a video on my phone but the bouncing in the truck also interferes with vision. For that reason, I could not even read without getting sick to

DECLARATION OF HERMAN OVERPECK

my stomach. Also, there were many occasions where my co-driver would need help with some issue such as directions, wrong turns requiring a breakdown of the pups in order to turn the truck around, calls to and from the FedEx hubs about information on the load which could be asking about our location, estimated time of arrival, or confirming trailer numbers.

20. Because I was expected to constantly be on the move, I had an ice chest in which I kept canned and dried goods. I would eat either during a DOT-mandated thirty-minute stop between Tracy and Palm Springs, or wait until we got to the other end to eat. Regardless, I had to be near the truck to keep an eye on it and so that we could keep moving.

21. A major problem concerned our need to go to the bathroom. Peeing in a bottle became the norm for me. We could not afford to stop each time either of us had to urinate. Bouncing in the truck causes more frequent urgencies to urinate, as does lying down in a bumpy moving truck which puts pressure on the bladder. Time commitments could not be met if we had to stop each time to relieve ourselves.

22. Performing these runs for FedEx typically involved about 20-22 hours of either being in the moving truck and/or performing other pre- and post-trip tasks, plus another 2-4 hours spent waiting at the FedEx linehaul office to be given the paperwork and details for the next run. We generally had to wait at the FedEx station or yard, often in our truck, so that we could begin to run as soon as the trailers were ready. FedEx put us under pressure to move quickly and efficiently. I understood from my training that we needed to meet FedEx's expectations, which meant go, go, go, to beat traffic and save time.

23. Although I was either driving or otherwise needing to be in the FedEx truck or yard nearly 24 hours a day, five days a week, with some limited exceptions, I was not paid for large chunks of this time.

24. For example, throughout my time working for FedEx, I was paid a flat rate per mile. This did not account for my pre- and post-trip work at the FedEx facility or the time I had to spend

DECLARATION OF HERMAN OVERPECK

waiting at the FedEx Linehaul office to be ready to for the next run once the trailer was hooked. I simply was not paid for this time.

25. But in addition to the time spent beholden to FedEx while the truck was stationary, I do not believe I was paid for the time spent in the moving FedEx vehicle, not free to leave, while my co-worker was driving. Rather, it was my impression that the per mile rate I was supposed to be earning was reduced nearly in half to make it look like it was compensating me for the time I was in the truck while my co-driver was driving. In other words, my per mile rate was based on a driving rate of .58 per mile, but the rate was cut to .29 per mile so that it would cover the time I spent driving and the time my co-driver spent driving. I wasn't being paid much or anything at all (not even minimum wage) for the time spent in the truck while my co-worker was driving because my driving rate was reduced to make it look like my non-driving time in the vehicle was being paid for. But this was like stealing from Peter to pay Paul. It was not right.

26. My paystubs with the Bondz name also were inaccurate because they generally showed me as working roughly 40 hours per week, give or take a few hours. But as I've explained, in reality I was working well over 100 hours per week, including many hours driving the truck and performing pre- and post-trip tasks.

27. Some of the pay stubs were inaccurate even assuming I should only have been compensated for eight hours per day (which I dispute). For example, I recall one of my Bondz paystubs showing me as only having worked 32 hours that week. And reviewing other paystubs, I see that there are multiple paystubs showing me as having worked under 40 hours. Setting aside for a moment my belief that I should be paid for all on-duty hours, any paystub showing me working under 40 hours would also be inaccurate because I don't recall ever missing a day of work at Bondz. My Bondz manager convinced me that it was bad to burn up any time in "on duty not driving" status because they would use mileage from a dedicated run at .58 per mile to determine my pay. So, my pay is constant. Then they convert it from cents per mile to dollars per hour. This means if traffic is heavy and I am on the road an extra 3 hours that day, I am

DECLARATION OF HERMAN OVERPECK

not paid for the extra time because their method failed to consider the realities of the road, especially during the dedicated run I was driving – constant traffic.

28. The paystubs also did not show FedEx as my employer or provide FedEx's address. This sent me the message that even though FedEx had control over my route, hours, and working conditions, there would be no recourse or accountability from FedEx if I had concerns about my working conditions, hours, or pay. It sent the same message about injury – that if I was injured on the job, for example while working in FedEx yard or with a FedEx trailer or while lifting or moving FedEx equipment, FedEx would not take responsibility. FedEx was not providing me with its contact information on my pay stubs in case I needed to address any of these problems. For example, the contractor G2 Logistics ignored numerous requests from me to repair an exhaust leak that was going into the cab of the truck where I was spending most of my time working. As FedEx was not listed on my paystubs as the employer and did not identify itself as my employer, I did not feel comfortable seeking out its aid.

29. I remember receiving my first pay stub at Bondz and not understanding it. Naturally I spoke with someone at Bondz because Bondz' name was on the paycheck. I didn't even know that talking to FedEx was an option for situations like this, even though it controlled my working conditions. FedEx's name and contact information were not on my pay stubs. I discovered after performing my assigned run several times that miles were slow-moving miles due to traffic I would encounter on a daily basis. Since FedEx designs the routes and sets the timing of them, it would have been advantageous to discuss this issue with FedEx directly. I certainly would have liked to work out the problem by changing times, routes, etc. When I brought that up with Bondz, it answered that FedEx makes the rules, take it or leave it. I did not feel FedEx would actually do anything. Again, my paystubs did not show them to be my employer.

DECLARATION OF HERMAN OVERPECK

30. As I have explained in this Declaration, I was an essential part of FedEx's operations and workforce. For example, I worked alongside FedEx employees at FedEx hubs and at a FedEx "smart post." I started and ended my tours of duty at FedEx hubs. I shuttled back and forth between FedEx facilities continuously and was bound to the premises between the trips out and back from Tracy. I also had to wear caps and polo shirts with the FedEx logo on them. I did monthly training sessions with an app called "Carriers Edge" that FedEx required and for which I utilized my FedEx ID number to login. Before leaving I was trained on the "Trip Buddy" app which became mandatory for use at all FedEx hubs. This app, downloaded on my phone was used by FedEx to acquire all information about any given load. It provided me direction as to what trailer to take, where to take it, and what routes were needed to be followed. It tracked my location and required me to 'Arrive' when I completed the journey. It would then compel me to sign into the app anew, and receive my next assignment. None of this direction came from my contractors. I was an integral part of FedEx's team, even if FedEx refused to acknowledge me as its employee. The work I did was necessary to FedEx's operations and to ensuring its customers got their freight on time.

31. FedEx uses the term "Vendor" to describe my truck driver work which is printed on the back of my FedEx company badge. The term "vendor" doesn't make sense to me as I wasn't selling anything and FedEx controlled my work anyway. Still, it conveyed to me that I could not seek employment benefits from FedEx or that doing so would be futile.


32. As a driver in the field, I often ran into other drivers at truck stops and conversed with them. I learned that FedEx Freight employees, not labeled as "vendors," and which do the same type of work I do using pups, doubles, and interstate travel, are considered by FedEx to be employees with full benefits! FedEx freight workers laughed at us (in FedEx Ground) calling us the "step child" of FedEx for being deprived of such benefits. Moreover, the benefits included paid vacations, health insurance and pension benefits that I am not offered because I am a classified as a vendor and not an employee of FedEx. It is outrageous to me this division actually

DECLARATION OF HERMAN OVERPECK

exists under this major corporation which boasts about its benefit packages in the general community.

33. As another example, I met a “FedEx Ground Jockey” (a driver that moves FedEx trailers only on FedEx property) at the Woodbridge facility and was informed that he has excellent employment benefits and that that was the main reason he worked there. I also met a pregnant woman working as a Jockey at the Metuchen, New Jersey hub who also indicated to me that the benefits were awesome and protected her pregnancy and all that that entails. I could have and would have liked to use health and pension benefits had they been available to me. But my false label as a vendor prevented me from enjoying or seeking such benefits from FedEx. These experiences made clear to me that it would be pointless to try to seek benefits from FedEx or to challenge FedEx’s exclusion of me from its benefit plans. I think this scheme is wrong and deserves urgent correction by the courts.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on 05 / 31 / 2022, in Tucson,
Arizona_____.



Herman Overpeck

DECLARATION OF HERMAN OVERPECK

TITLE	Overpeck v. FedEx: Declaration for Signature
FILE NAME	Declaration of He...for signature.pdf
DOCUMENT ID	9bd3f2ce92d618b05b8f84d04fb0ba44315184ad
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Signed

Document History



SENT

05 / 31 / 2022

16:39:44 UTC-7

Sent for signature to Herman Overpeck (hjoeverpeck@gmail.com)
from mail@schneiderwallace.com
IP: 72.18.247.90



VIEWED

05 / 31 / 2022

16:47:13 UTC-7

Viewed by Herman Overpeck (hjoeverpeck@gmail.com)
IP: 107.77.230.114



SIGNED

05 / 31 / 2022

16:58:36 UTC-7

Signed by Herman Overpeck (hjoeverpeck@gmail.com)
IP: 107.77.230.114



COMPLETED

05 / 31 / 2022

16:58:36 UTC-7

The document has been completed.